

REMARKS

Applicant has carefully reviewed the Examiner's June 17, 2003 Official Action and respectfully requests reconsideration based on the above amendments and the following comments.

New claim 53 has been added. Claims 23-53 remain in the application for consideration.

Applicant respectfully requests that the finality of the Examiner's June 17, 2003 be withdrawn as being premature under MPEP 706.07(a).

The Examiner indicates on page 6 of the June 17, 2003 Office Action that "the new grounds of rejection were necessitated by Applicant's amendment, e.g. "the rubber-elastic portion and elongated in the crosswise direction". Applicant emphatically disagrees that this amendment necessitated the new grounds of rejection.

The original corresponding claim language in claim 1 reads as follows:

"this portion and elongated in the crosswise direction."

To clarify the word "this", Applicant deleted the word "this" and substituted therefore the words "the rubber elastic." The

identified the rubber-elastic portion has a clear antecedent basis one line above the language in question. Accordingly, Applicant in no way either expanded or limited the coverage of the claim through this amendment necessitating the new grounds of rejection.

In addition, the primary purpose of Applicant's April 4, 2003 response was to place the application in condition for allowance on the basis the Examiner's indication that claims 5 and 6 would be allowable subject to overcoming his formal objections. In response to the Examiner's indication of allowable claims, Applicant submitted new claims 23-52 which were drafted **only** to overcome the Examiner's 35 U.S.C. § 112 rejection, and to combine the features of original claim 1 and allowable claim 5.

Accordingly, there was nothing whatsoever in Applicant's April 4, 2003 response which "necessitated" the new grounds of rejection.

With further regard to the Examiner's objection to the drawings, Applicant traverses these rejections for the following reasons:

The Examiner maintains that "a stop" on an underside of the retaining means defined in claim 23 is not shown on the drawings. However, this is **not** correct. The stop mentioned in

claim 23 is exemplified in the different Figures of the drawings as being an upper part of the chassis 11, the front 15 of this chassis 11 and the upper bead 37 on the chassis 11, and this is clearly explained in the specification on page 13, last paragraph.

The Examiner further states that the feature "the support means are adjustable lengthwise" in claim 44, and the feature "longitudinal weakenings to permit a shortening of said rubber blank" in claim 45 are not shown in the drawings either.

However, these statements are also incorrect. The support means and/or the rubber blank 33 is shown in both Fig. 4, Fig. 5 and Fig. 8 and in all these representations it is clearly indicated, that the support means or rubber blank are provided with weakenings 50 which permit a shortening thereof in the lengthwise direction 49 (perpendicular to the crosswise direction 15 shown in e.g. Fig. 1), vide e.g. the description of Fig. 8 on page 15, lines 11-19 of the specification.

In order to better identify the elements claimed and shown in the drawings, Applicant has amended the claims to include the drawing reference number for each of the elements claimed.

The Examiner further indicates that the cross-hatching proposed by Applicant is not approved because the rubber-elastic

portions are not shown in proper cross-hatching. Applicant does not agree. The cross-hatching proposed is that corresponding to "section of rubber or electrical insulation" shown on page 600-95 of the MPEP. Why the Examiner has directed Applicant to the cross-hatching for plastic on synthetic resin is not understood, especially since the claims are directed to "rubber" which is consistent with what Applicant has proposed.

Applicant respectfully submits that the Examiner's objection to the drawings has now been overcome.

In response to the Examiner's objection to the specification, Applicant has amended the specification to include the features set out in the claims, but not described in the specification identified by the Examiner. Applicant respectfully submits that the Examiner's object to the specifications has now been overcome.

With respect to the Examiner's 35 U.S.C. 112 rejection of claims 26, 29, 31, 32, 35, 39, 41, 51 and 52, under 35 U.S.C. 112, second paragraph, Applicant has amended claims 23, 26, 29, 31, 35, 49, 51 and cancelled claim 52 to eliminate each of the problems identified in these claims.

However, with regard to claim 32, the Examiner's opinion that "a shelf" of claim 32 is the same structure as the "carrying means" of claim 23, is not correct. The carrying

means is indicated by the reference 6 in Fig. 1, Fig. 3 and Fig. 5, whereas the shelf is indicated by the reference 7 in Fig. 1, Fig. 3, Fig. 4 and Fig. 5, and on page 10, lines 1-4 the carrying means is described as "having the form of a forward projecting slat 6 provided below on the chassis 11. The slat 6 continues in a shelf 7, which curves downward in the front at 16." Thus, the carrying means and the shelf are two distinct features and the carrying means does **not necessarily** have to continue in or to be provided with an extension in the form of a shelf 7. Besides they have quite different functions as explained in the specification.

Further, with regard to claims 39 and 41, "the holders" has a clear antecedent basis respectively in claims 38 and 40.

Applicant respectfully submits that the Examiner's 35 U.S.C. 112 rejection has now been overcome.

The Examiner has further rejected claims 23, 25-32, 37, 42, 43, 46-48 and 50-52 under 35 U.S.C. 103(a) as being unpatentable over Althoff in view of Barazier. Applicant respectfully traverses this rejection for the following reasons:

Brazier et al. will not result in the carrying device of the present application as defined in claim 23.

Thus, it is clear that the disclosure of Althoff, in particular the features shown in Figures 2 and 3, concerns a rack for storage of articles, such as compact discs packaged in containers of rectangular shape, which rack consists of an elongated upper groove and an elongated lower groove, the upper groove being defined by an upper shelf 4 integral with a wall component 5 of the rack and a frontal barrier portion 6B, whereas the lower groove being defined by a lower shelf 4 integral with another wall component 5 of the rack and a frontal barrier portion 6A, vide also e.g. column 2, lines 22-36. These grooves are mutually spaced apart such that when a container C is inserted into the grooves (upper and lower) the upper and lower barriers 6B and 6A will prevent it from falling out of the grooves and even prevent it from being retracted from the rack except by lifting the underside of the container up to the underside of the upper shelf 4 and then swing the lower edge of the container over the upper edge of the lower frontal barrier 6A, whereupon the container can be lowered down so that the upper edge of the container may pass under the lower edge of the upper frontal barrier 6B.

In comparison, the carrying device according to the claimed invention has no upper groove in which a box-shaped item is to be introduced to be retained behind a fixed and

rigid frontal barrier. It has a rubber-elastic portion 32 which may be fixed or inserted into an upper groove 23 of the carrying device, but the box-shaped item is not retained in this groove but by a lip 13 on the underside of the rubber elastic portion 32.

Furthermore, the carrying device of the claimed invention has **NO lower groove** in which a box-shaped item is inserted or retained behind a fixed and rigid frontal barrier. The carrying device of the present application has no lower groove but a lower carrying means or member 6 in the form of a substantially smooth and plane, essentially horizontal upper supporting surface. This is quite different from a groove.

Therefore, even though Brazier discloses a shelf support in which a shelf is inserted in a slot formed between a support member and a retaining member so that a shelf may be retained there between as a cantilever and the retaining member may be a strip 12 made of a soft elastomer or flexible PVC having on the underside front, middle and rear **protuberances** 14, 15, 16 for engagement with the upper horizontal surface of a shelf as seen in Fig. 2, the combination of this disclosure with that of Althoff cannot result in the carrying device of the claimed invention but in a carrying device having an upper retaining means in the form of an elastomeric strip with protuberances on its underside

for engagement with an inserted item and a lower carrying means in the form of a **groove** with a rigid, fixed **frontal barrier**, whereas the carrying device according to the claimed invention has a **carrying means 6** in the form of a **substantially smooth and plane** essentially horizontal upper **supporting surface**.

Thus, the carrying device of the claimed invention is not a combination of the features disclosed by Althoff and Brazier as postulated by the Examiner. If the Examiner is suggesting that it would also be obvious to change the lower groove disclosed by Althoff into a substantially smooth and plane supporting surface this **can** only be based on mere hindsight.

Accordingly, Applicant submits that the carrying device defined in claim 23 is new and unobvious, resulting in a particular technical novel effect as explained on page 13, line 1 to page 14, line 34 of the application, which effect cannot be obtained nor foreseen by the disclosure of Althoff and Brazier.

Applicant finally notes that new independent claim 53 combines the features of claim 23 and allowable claim 24 and accordingly, is allowable.

Applicant submits that the invention is new and unobvious and not disclosed by the cited art. Accordingly,

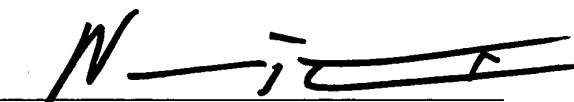
Appln. No. 09/830,698
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Applicant respectfully solicits the Examiner's early review and
issuance of this application.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant(s)

By



Norman J. Latker
Registration No. 19,963

NJL:ft
Telephone No.: (202) 628-5197
Facsimile No.: (202) 737-3528